MISCELLANY.

Professional Etiquette.

In England there is a Bar Council to whom all questions of legal etiquette are referred. The following are some of the conclusions of this tribunal, mentioned in the Annual Statement of the Council.

Advertising and Advising for Annual Payment.

The Council have had under their consideration the following communication from a barrister: "To the Bar Council,—I was 'called' Nov. 18th, 1888, by the Honble. Society of the Inner Temple. Admitted an advocate of the North-West Territories of Canada, February 15th, 1904. I therefore wish to ask following questions: (a) Can I, without contravening any unwritten law or etiquette, advertise in one of the Canadian North-Western journals that I am now prepared to represent in London any Canadian from the North-West Territories, either as an advocate of N. W. T. (which includes power to act as Commissioner for Oaths) or as their representative in the English Courts? (b) I have the offer to be the paid adviser of a Universal Information Bureau on certain legal matters, but should only receive a certain salary for the year, however many cases I had to advise upon. I should not be instructed by a solicitor, but by the secretary of the company. Could I do this either as a Canadian or English lawyer, or would it be breaking an unwritten law of etiquette? Your kind consideration is asked.—Yours truly, ———."

The Council were of opinion (a) that to advertise as suggested would be in contravention of the rule of professional etiquette that an English barrister should not advertise; and (b) that the case is covered by the previous pronouncement of the Council as to counsel acting for or advising clients without the intervention of a solicitor (see Annual Statement, 1896-7, p. 11, and "Annual Practice" (1906), vol. ii., p. 685), and that it would be a breach of professional etiquette for an English barrister to advise in consideration of an annual payment and without the intervention of a solicitor.

English Barrister and Colonial Solicitor.

The Council have had under their consideration a communication from a barrister requesting their opinion under the following circumstances: He has for some years practised in a colony where there is no distinction between barristers and solicitors, and where both have equal rights of audience in the Courts. Since 1898 he has been a partner in a firm of advocates, solicitors, and notaries public, carrying on business in such colony. He has recently returned to reside in England, but continues to be a member of the said firm, and to draw a share of the profits of the business. He

desires to know whether, under these circumstances, he is entitled to practise at the Bar in England.

The Council were of opinion that he ought not to practise as an English barrister so long as he remains a member of the colonial firm, or takes a share of the profits made by that firm.

Agreements as to Fees.

The following communication was received from a barrister practising in India: "July 31, 1906. Dear Sir,—May I ask for an expression of opinion from the Professional Conduct Committee of the Council upon the following point? Is it unprofessional for counsel to whom a brief has been delivered by a solicitor to agree with that solicitor that he, counsel, will wait for payment of the fees payable on that brief until that solicitor shall have received them from his lay client? I should explain that this question is not intended to contain any suggestion of an agreement that payment of fees shall abide the result of the case. With many thanks in anticipation of your reply, I remain, yours truly, ———."

The Council replied that for a barrister in England to make such an agreement with a solicitor as is suggested in the above letter would in the opinion of the Council be a breach of professional etiquette.

The Council have further had under their consideration the following communication from a barrister: "Dear Bingley,—Will the Bar Council express an opinion upon the following points: (a) Is it a breach of professional etiquette to make an agreement with a solicitor to do all his cases of a particular class at a fixed fee in each case, irrespective of the amount claimed, or of the circumstances of each case? (b) Is it a breach of professional etiquette habitually to accept a less fee on a brief in the County Court than that commonly allowed on taxation to a successful party in an action for the amount of the claim in question—e. g. a fee of one guinea in a claim under the Employers' Liability Act for 300l.?—Yours faithfully, ———."

The Council replied to the above questions as follows: (a) It is a breach of professional etiquette to make an agreement with a solicitor to do all his cases of a particular class at a fixed fee in each case, irrespective of the amount claimed or of the circumstances of each case. (b) The propriety of the amount of a brief fee must be determined in each case by reference to the circumstances of the particular case. It would not be a breach of professional etiquette to accept a less fee than that commonly allowed on taxation, if in other respects it were a proper one.

Vendor and Purchaser of Wives.—An exceedingly singular case has arisen in England under the will of one Wagstaff, and the decision of the judge in this case seems to have been based upon the

plain, ordinary principles of common sense. It appears that Mr. Wagstaff entered into a bargain with an individual by which he actually purchased the latter's wife from him—the lady in question being entirely ignorant of the transaction. She was left to believe that she was to be employed as Mr. Wagstaff's housekeeper and **was** so employed. After serving for some years in that capacity Mr. Wagstaff informed her that her husband was dead and showed her some newspaper publication to this effect. Subsequently he proposed marriage and was accepted.

A great many years afterwards this villainous Enoch Arden turned up, but it appeared only for the purpose of attempting to extort money from Wagstaff—whether successfully or not does not appear, but it does appear that the **soi-distant** Mrs. Wagstaff knew of his reappearance. She was led to believe, however, that as he had been absent from her for seven years her marriage to Wagstaff was legal. The real husband, however, died before Wagstaff, with whom the lady lived in peace and quietness and to the mutual content of both until Wagstaff's death. Wagstaff, who was a man of large means, left his property to his "wife during her life if she should so long continue a widow," and it could not be disputed that the wife was the lady with whom he had gone through the form of marriage and whose husband is still living.

The inevitable heirs of Wagstaff of course turned up and contended, first, that the gift to her being conditional and as she could not comply with the condition the gift was void; or, secondly, in the alternative that the testator meant her life interest to terminate as soon as she renounced the character of his widow and that when she publicly announced her bigamy she ceased to fill that position. It was contended on behalf of the lady—whose good conduct and good faith were never called in question—that she took a life estate with a condition subsequent and if the condition could not be fulfilled the gift was good. She could not become the testator's widow, but the gift remained.

The learned judge did not accept either of these conclusions but held that the gift was one with a limitation and that it was evidently the intent of the testator that he meant the gift to continue unless and until the lady contracted a marriage subsequent to his death.

Thus with the "broom of common sense" the learned English judge swept away the cobwebs with which the spiders of the law, so to speak, had attempted to entangle the plain intention of the testator. It is to be regretted that often in the construction of wills the plain rules of common sense should not be invoked when the court can plainly see what the testator meant.